



BILLING CODE 3510-33-P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 738, 740, and 742

[Docket No. 200204-0044]

RIN 0694-AH93

Amendments to Country Groups for Russia and Yemen under the Export Administration Regulations

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: In this final rule, the Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) to revise the Country Group designations for the Russian Federation (Russia) and Yemen based on national security and foreign policy concerns, including proliferation-related concerns. This action is intended to facilitate and support accountability in connection with exports and reexports of items to these destinations under the EAR, and is part of a larger effort to restructure and re-align the Country Groups based on the aforementioned interests.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Jodi.Kouts, Director, Chemical and Biological Controls Division, at email Jodi.Kouts@bis.doc.gov or by phone at (202) 482-6109.

SUPPLEMENTARY INFORMATION:

Background

The Bureau of Industry and Security (BIS) is currently undertaking a comprehensive review of all Country Groups in the Export Administration Regulations (EAR) to ensure that they appropriately reflect current U.S. national security and foreign policy, including nonproliferation interests.

The foundation of this rule derives from the structure and purposes of the Commerce Country Chart found in Supplement No. 1 to part 738 and the Country Groups found in Supplement No. 1 to part 740 of the EAR. The Country Chart contains licensing requirements based on the destination to which items listed on the Commerce Control List (CCL) (Supplement No. 1 to part 774) will be exported or reexported and their corresponding “Reason for Control,” which is found in the CCL entry. An “X” in the cell where the “reason for control” column intersects with the row of the destination indicates a license requirement. Licenses are required to export and reexport items under the EAR for multilateral reasons (i.e., chemical and biological (CB), nuclear nonproliferation (NP), national security (NS), and missile technology (MT)); and for unilateral reasons (i.e., region stability (RS), crime control (CC) and anti-terrorism (AT)), as well as to implement controls for firearms convention (FC) and United Nations Security Council purposes. Controls for United Nations Security Council purposes are identified by the abbreviation “UN” in the applicable CCL entries. The “UN” reason for control is described in § 746. 2(b) of the EAR.

In combination with the CCL - the list of items classified and set-out as Export Control Classification Numbers (ECCNs) and arranged by categories - the Country Chart allows an exporter to determine whether a license is required for the export or reexport of an item on the CCL to the destinations on the Chart, unless otherwise specified in the particular ECCN entry on the CCL. The lists of Country Groups (A, B, D and E) set out countries with respect to relative risk and record of like-minded export controls, and importantly, as a basis for the availability of exceptions from license requirements described in part 740 (License Exceptions) of the EAR, provided the conditions for the use of the License Exception are met. Country Groups may also be used when describing license review policy.

The two lists – the Commerce Country Chart and Country Groups - were developed for separate purposes and allow for systematic licensing determinations. Country Groups are not reviewed unless a license is required by the Country Chart for exports and reexports of items listed in the CCL, unless, as mentioned above, otherwise indicated in the ECCN entry on the CCL.

Continuing to apply the structure and purposes of the Country Chart and Country Groups in furtherance of U.S. national security and foreign policy, including nonproliferation interests, this rule is part of BIS's review of Country Groups. BIS has determined the current Country Group designations for Russia and Yemen should be changed to address U.S. national security, foreign policy, including proliferation concerns as further described below.

Specifically, this rule removes Russia from more favorable treatment under Country Groups A:2 and A:4 and adds it to Country Groups D:2 and D:4 based on nuclear and missile

technology proliferation concerns, respectively. BIS also amends the licensing policy for related items to reflect a presumption of denial consistent with the Country Group changes. Separately, this rule removes Yemen from more favorable treatment under Country Group B and adds it to Country Group D:1 to reflect national security concerns.

As a result of these Country Group changes, certain license exceptions are no longer available for Russia and Yemen, and licenses are now required for those destinations in connection with exports, reexports, and transfers (in-country) of certain controlled items. In addition, certain transactions may be subject to more stringent licensing review policies or additional prohibitions as outlined in other parts of the EAR. With these actions, BIS seeks to ensure accountability for exports and reexports of items to these destinations. This rule is the first action related to the larger effort to re-structure and re-align the Country Groups set forth in Supplement No. 1 to Part 740 of the EAR.

Specific Amendments

Russia: Country Groups A and D

In this rule, BIS removes Russia from Country Groups A:2 (Missile Technology Control Regime) and A:4 (Nuclear Suppliers Group) to address U.S. concerns about diversion of U.S.-origin items to or from Russia for prohibited end uses and end users. This rule removes the “X” from Column “[A:2]” and the “X” from Column “[A:4]” in Supplement No. 1 to Part 740 for “Russia.” In relation to the changes to Country Groups A:2 and A:4 for Russia, this rule also adds Russia to Country Groups of concern D:2 (Nuclear) and D:4 (Missile Technology). This rule adds an “X” in Column “[D:2]” and an “X” in Column “[D:4]” in Supplement No. 1 to Part 740 for “Russia.” Consistent with adding “Russia” to Country Group “[D:2],” this rule adds an

“X” in Column “NP 1” for “Russia” in Supplement No. 1 to Part 738 – Commerce Country Chart. Finally, BIS revises the licensing policy for items to Russia to a policy of presumption of denial when the items are controlled for reasons described under § 742.2 (Proliferation of chemical and biological weapons), § 742.3 (Nuclear nonproliferation), or § 742.5 (Missile technology) of the EAR. However, with regard to NP and MT controls, applications for exports and reexports of items, which include commodities, software and technology, to Russia in support of U.S.-Russia civil space cooperation activities or commercial space launches will be reviewed on a case-by-case basis.

These amendments are consistent with the purpose of this rule to address U.S. concerns about Russia’s lack of cooperation and accountability for U.S.-origin items and diversion to unauthorized or prohibited proliferation activities, end uses, and end users. Specifically, Russia has not been cooperative in allowing BIS to perform pre-license checks or post-shipment verifications related to U.S.-origin goods. The presumption of denial under § 742.2 further accentuates the seriousness with which the United States takes Russia’s use of a “novichok” nerve agent in the attack against Sergei Skripal and his daughter Yulia Skripal in the United Kingdom on March 4, 2018.

Yemen: Country Groups B and D:1

In this rule, BIS removes Yemen from Country Group B and places Yemen in the country group of concern for national security reasons, Country Group D:1 (National Security). Specifically, this rule removes “Yemen” from Country Group B in Supplement No. 1 to part 740, and adds an “X” in Column “[D:1]” of that Supplement for “Yemen.”

These changes are being made to address concerns about diversion of U.S.-origin items in Yemen for unauthorized purposes, including prohibited proliferation activities, end uses, and end users. In addition, there are concerns about the diversion to unauthorized and prohibited end uses and users of U.S.-origin items controlled for national security reasons. The ongoing conflict in Yemen has fostered international terrorism and instability in the Arabian Peninsula, including the proliferation of small arms, unmanned aerial systems, and missiles.

Impact of Removing Russia from Country Groups A:2 and A:4 and Adding to Country Groups D:2 and D:4

The removal of Russia from Country Groups A:2 and A:4 means a number of license exceptions are no longer available for Russia, and previously eligible items now require a license to Russia. Consistent with removing Russia from Country Groups A:2 and A:4 and adding it to Country Group D:2, a license is required for the export or reexport of items subject to NP 1 controls as identified in the applicable Export Control Classification Numbers (ECCNs) in Supplement No. 1 to part 774 (The Commerce Control List). Denoting this license requirement, this final rule adds an “X” in the NP 1 column of the nuclear nonproliferation column in Supplement No. 1 to part 738 of the EAR for Russia. License applications for these items will be reviewed with a presumption of denial. Consistent with adding Russia to Country Group D:2, the general prohibition in paragraph (a)(1)(i)(A) of § 744.6, Restrictions on certain activities of U.S. persons, will be applicable if the U.S. person exports, reexports, or transfers (in-country) with “knowledge” of a prohibited end use in or by Russia.

Consistent with adding Russia to Country Group D:4, the general prohibitions in paragraphs (a)(1) and (3) of § 744.3, Restrictions on certain rocket systems (including ballistic missiles, space launch vehicles and sounding rockets) and unmanned aerial vehicles (including cruise missiles, target drones and reconnaissance drones) end-uses, will be applicable if the exporter, reexporter, or transferor has “knowledge” the transaction involves one of those prohibited end uses in or by Russia. In addition, consistent with adding Russia to Country Group D:4, the general prohibitions in § 744.6 under paragraphs (a)(1)(i)(B) and (a)(2)(i) will be applicable if the U.S. person exports, reexports, or transfers (in country) with “knowledge” of one of those prohibited end uses in or by Russia, or engages in one of those prohibited activities with “knowledge” that it will directly assist such an end use.

Impact of Removing Yemen from Country Group B and Adding to D:1

The removal of Yemen from County Group B means that the following license exceptions will no longer be available: § 740.3, Shipments of limited value (LVS); § 740.4, Shipments to Country Group B countries (GBS); and § 740.6, Technology and software under restriction (TSR). As a corollary, Yemen’s addition to Country Group D:1 means that the following license exceptions, or other portions thereof, which include limitations related to Country Group D, will no longer be available: § 740.9, Temporary imports, exports, reexports, and transfers (in-country) (TMP); § 740.10, Servicing and replacement of parts and equipment (RPL); § 740.12, Gift parcels and humanitarian donations (GFT); § 740.14, Baggage (BAG); § 740.15, Aircraft and vessels (AVS); § 740.16, Additional permissive reexports (APR); and § 740.17, Encryption, commodities, software, and technology (ENC).

Section 742.4(b)(2) of the EAR states the licensing policy for exports and reexports of national-security controlled items to destinations in Country Group D:1. That licensing policy is to approve applications when BIS determines, on a case-by-case basis, that the items are for civilian use or otherwise would not make a significant contribution to the military potential of the country of destination that would prove detrimental to the national security of the United States. License applications to export or reexport national security controlled items to Yemen will now be subject to this licensing policy.

In addition, Yemen's placement in Country Group D:1 will result in the imposition of restrictions on the export, reexport, and transfer (in-country) of certain microprocessors to military end uses and end users in Yemen, pursuant to § 744.17, Restrictions on certain exports, reexports, and transfers (in-country) of microprocessors and associated "software" and "technology" for 'military end uses' and to 'military end users.' Furthermore, restrictions on certain exports and reexports to vessels and aircraft located in Yemeni ports or registered in Yemen will become effective pursuant to § 744.7, Restrictions on certain exports to and for the use of certain foreign vessels or aircraft. Finally, the addition of Yemen to Country Group D:1 will expand the licensing requirements for reexports of the foreign-produced direct product of U.S.-origin technology and software to Yemen pursuant to § 736.2(b)(3), General Prohibition Three.

Export Control Reform Act of 2018

On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included the Export Control Reform Act of 2018

(ECRA) (50 U.S.C. 4801-4852). ECRA provides the legal basis for BIS's principal authorities and serves as the authority under which BIS issues this rule. As set forth in Section 1768 of ECRA, all delegations, rules, regulations, orders, determinations, licenses, or other forms of administrative action that were made, issued, conducted, or allowed to become effective under the Export Administration Act of 1979 (50 U.S.C. 4601 et seq.) (as in effect on August 12, 2018, and as continued in effect pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.)), or under the Export Administration Regulations, and were in effect as of August 13, 2018, shall continue in effect according to their terms until modified, superseded, set aside, or revoked under the authority of ECRA.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule has been designated a "significant regulatory action," although not economically significant, under section 3(f) of Executive Order 12866. This final rule will support the national security and foreign policy objectives of the United States by broadening the U.S. Government's visibility into exports, reexports, and transfers (in-country), for a country of concern when the transactions involve national security controlled items and items controlled for proliferation reasons.

2. Notwithstanding any other provision of law, no person may be required to respond to or be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves a collection currently approved by OMB under control number 0694-0088, Simplified Network Application Processing System. This collection includes, among other things, license applications, and carries a burden estimate of 42.5 minutes for a manual or electronic submission for a total burden estimate of 31,878 hours. BIS expects the burden hours associated with this collection to increase slightly by 4 hours for an estimated cost increase of \$120. This increase is not expected to exceed the existing estimates currently associated with OMB control number 0694-0088.

3. This rule does not contain policies with federalism implications as that term is defined under Executive Order 13132.

4. Pursuant to section 1762 of the Export Control Reform Act of 2018 (50 U.S.C. 4801-4852), which was included in the John S. McCain National Defense Authorization Act for Fiscal Year 2019, this action is exempt from the Administrative Procedure Act (5 U.S.C. 553) requirements for notice of proposed rulemaking, opportunity for public participation, and delay in effective date.

5. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical

requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, are not applicable. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

6. This final rule is not subject to the requirements of Executive Order 13771 (82 FR 9339, February 3, 2017) because it is issued with respect to a national security function of the United States. The cost-benefit analysis required pursuant to Executive Orders 12866 and 13563 indicates that this rule is intended to improve national security as its primary direct benefit. Specifically, revising the status of the Country Group designations for Russia and Yemen in this rule protects the United States and allies by serving the priorities of reducing the risk that exports, reexports, and transfers (in-country) of items subject to the EAR could be diverted and contribute to weapons of mass destruction proliferation and the military capability of countries of concern, contrary to U.S. national security interests. Accordingly, this rule meets the requirements set forth in the April 5, 2017 OMB guidance implementing Executive Order 13771 (82 FR 9339, February 3, 2017), regarding what constitutes a regulation issued “with respect to a national security function of the United States,” and is, therefore, exempt from the requirements of Executive Order 13771.

Savings Clause

Shipments of items removed from license exception eligibility or eligibility for export, reexport or transfer (in country) without a license as a result of this regulatory action that were on dock for loading, on lighter, laden aboard and exporting carrier, or en route aboard a carrier to a port of export, on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], pursuant to actual orders for exports, reexports and transfers (in country) to a foreign destination, may

proceed to that destination under the previous license exception eligibility or without a license so long as they have been exported, reexported or transferred (in-country) before 30 days from date of publication. Any such items not actually exported, reexported or transferred (in-country) before midnight on [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER] require a license in accordance with this final rule.

List of Subjects

15 CFR Part 738

Exports.

15 CFR Part 740

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

15 CFR Part 742

Exports, Terrorism.

Accordingly, parts 738, 740, and 742 of the Export Administration Regulations (15 CFR parts 730-774) are amended as follows:

PART 738 – COMMERCE CONTROL LIST OVERVIEW AND THE COUNTRY

CHART

1. The authority citation for part 738 is revised to read as follows:

Authority: 50 U.S.C. 4801-4852; 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 42 U.S.C. 2139a; 15 U.S.C. 1824a; 50 U.S.C. 4305; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783.

2. Supplement No. 1 to part 738 is amended by revising the entry for “Russia” to read as follows:

SUPPLEMENT NO. 1 TO PART 738 – COMMERCE COUNTRY CHART

[Reason for control]

Countries	Chemical and biological weapons			Nuclear nonproliferation		National security		Missile tech	Regional stability		Firearms convention	Crime control			Anti-terrorism	
	CB 1	CB 2	CB 3	NP 1	NP 2	NS 1	NS 2	MT 1	RS 1	RS 2	FC 1	CC 1	CC 2	CC 3	AT 1	AT 2
						*	*	*	*	*	*					
Russia⁶	X	X	X	X		X	X	X	X	X		X	X			
						*	*	*	*	*	*					

* * * * *

⁶See §746.5 for additional license requirements under the Russian Industry Sector Sanctions for ECCNs 0A998, 1C992, 3A229, 3A231, 3A232, 6A991, 8A992, and 8D999.

* * * * *

PART 740 – LICENSE EXCEPTIONS

3. The authority citation for part 740 continues to read as follows:

Authority: 50 U.S.C. 4801-4852; 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 7201 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783.

4. Supplement No. 1 to part 740 is amended by:

a. In the Country Group A table:

i. Revising the table headings for [A:2] and [A:4], the entries for Russia and Ukraine, and footnote 2; and

ii. Redesignating footnote 3 as footnote 4, adding a new footnote 3, and revising newly redesignated footnote 4; and

b. In the Country Group D table, revising the entries for Russia and Yemen and footnote 1.

The revisions read as follows:

SUPPLEMENT NO. 1 TO PART 740 – COUNTRY GROUPS

COUNTRY GROUP A

Country	[A:1] Wassenaar participating states ¹	[A:2] Missile technology control regime ²	[A:3] Australia group	[A:4] Nuclear suppliers group ³	[A:5]	[A:6]
* * * * *						
Russia ^{1,2,3}						
* * * * *						
Ukraine ⁴		X	X	X		
* * * * *						

¹ Country Group A:1 is a list of the Wassenaar Arrangement Participating States, except for Malta, Russia and Ukraine.

² Country Group A:2 is a list of the Missile Technology Control Regime countries, except for Russia.

³ Country Group A:4 is a list of the Nuclear Suppliers Group countries, except for the People’s Republic of China (PRC) and Russia.

⁴For purposes of this supplement, as well as any other EAR provision that references the Country Groups, the designations for Ukraine also apply to the Crimea region of Ukraine. See § 746.6(c) of the EAR for an exhaustive listing of license exceptions that are available for the Crimea region of Ukraine. No other EAR license exceptions are available for the Crimea region of Ukraine. The Crimea region of Ukraine includes the land territory in that region as well as any maritime area over which sovereignty, sovereign rights, or jurisdiction is claimed based on purported annexation of that land territory.

* * * * *

COUNTRY GROUP D

Country	[D: 1] National Security	[D: 2] Nuclear	[D: 3] Chemical & Biological	[D: 4] Missile Technology	[D: 5] U.S. Arms Embargoed Countries ¹
	*	*	*	*	*
	*	*	*	*	*
Russia	X	X	X	X	
	*	*	*	*	*
Yemen	X		X	X	
	*	*	*	*	*

¹*Note to Country Group D:5:* Countries subject to U.S. arms embargoes are identified by the State Department through notices published in the FEDERAL REGISTER. The list of arms embargoed destinations in this table is drawn from 22 CFR 126.1 and State Department FEDERAL REGISTER notices related to arms embargoes (compiled at http://www.pmddtc.state.gov/embargoed__countries/index.html) and will be amended when the State Department publishes subsequent notices. If there are any discrepancies between the list of countries in this table and the countries identified by the State Department as subject to a U.S. arms embargo (in the FEDERAL REGISTER), the State Department's list of countries subject to U.S. arms embargoes shall be controlling.

* * * * *

PART 742 – CONTROL POLICY – CCL BASED CONTROLS

5. The authority citation for part 742 is revised to read as follows:

Authority: 50 U.S.C. 4801-4852; 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; Sec. 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003-23, 68 FR 26459, 3 CFR, 2004 Comp., p. 320; Notice of November 12, 2019, 84 FR 61817 (November 13, 2018).

6. Section 742.2 is amended by revising paragraph (b)(4) to read as follows:

§ 742.2 Proliferation of chemical and biological weapons.

* * * * *

(b) * * *

(4) License applications for items described in paragraph (a) of this section, when destined for the People’s Republic of China will be reviewed in accordance with the licensing policies in both paragraph (b) of this section and § 742.4(b)(7). When such items are destined to Russia, license applications will be reviewed under a presumption of denial.

* * * * *

7. Section 742.3 is amended by revising paragraph (b)(4) to read as follows:

§ 742.3 Nuclear nonproliferation.

* * * * *

(b) * * *

(4) License applications for items described in paragraph (a) of this section, when destined for the People’s Republic of China will be reviewed in accordance with the licensing policies in both paragraph (b) of this section and § 742.4(b)(7). When such items are destined to Russia, license applications will be reviewed under a presumption of denial. However, exports and reexports of items to Russia in support of U.S.-Russia civil space cooperation activities or commercial space launches will be reviewed on a case-by-case basis.

* * * * *

8. Section 742.5 is amended by adding two sentences at the end of paragraph (b)(5) to read as follows:

§ 742.5 Missile technology.

* * * * *

(b) * * *

(5) * * * When such items are destined to Russia, license applications will be reviewed under a presumption of denial. However, exports and reexports of items to Russia in support of U.S.-Russia civil space cooperation activities or commercial space launches will be reviewed on a case-by-case basis.

* * * * *

Dated: February 10, 2020.

Richard E. Ashooh,

Assistant Secretary for Export Administration.

[FR Doc. 2020-02941 Filed: 2/21/2020 8:45 am; Publication Date: 2/24/2020]